

# ***BAY STATE HYDROPOWER ASSOCIATION***

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February 9, 2009

Courtney Feeley-Karp  
Massachusetts Department of Energy Resources  
100 Cambridge Street  
Boston, MA 02110-1313

**RE: Request for Comments on 225 CMR 14.00 and 225 CMR 15.00**

Dear Ms. Feeley-Karp:

The Bay State Hydropower Association (“BSHA”) thanks the Department of Energy Resources (the “Department”) for the opportunity to submit comments to the emergency regulations promulgated for the Renewable Portfolio Standard (“RPS”) of the Green Communities Act (the “Act”) in late December. As you are aware, the BSHA comprises over 90% of the owners of hydro facilities in Massachusetts with over 90% of the capacity of hydropower in the Commonwealth.

Members of the Bay State Hydropower Association provide renewable and non-carbon emitting energy to the citizens of the Commonwealth of Massachusetts and New England. The Association’s members will be an integral part in achieving the Commonwealth’s goal of attaining 15% of energy supply from renewable resources by 2020. Members of the BSHA provide green energy, investments, local property taxes and jobs in Massachusetts.

The successful operation of the RPS is very important to the members because it will provide for maintenance of existing facilities of a certain size and the development of more power either from new facilities or efficiency improvements to existing facilities. The RPS should ensure that hydropower becomes a full partner in the Commonwealth’s plan to increase renewable energy, reduce greenhouse gases and diversify generation sources.

Following are the Association's comments on 225 CMR 14.00 and 225 CMR 15.00 as promulgated by the Department.

The Association does not believe that additional environmental regulatory conditions, as promulgated under 225 CMR 14.05 (1)(a)6 and 225 CMR 15.05(1)(a), should be imposed on hydroelectric facilities. Hydro facilities already comply with stringent environmental review, permitting and standards, including FERC, EPA and state requirements. The Association has previously commented that the comprehensive FERC oversight and jurisdiction are extremely detailed and demanding for hydro facilities incorporating a highly transparent and interactive process with federal, state, and non-government organizations responsible for environmental quality and biological diversity. Therefore, the Association recommends that the FERC process, with its state environmental review and permitting, be the standard in the rules. No other renewable, as defined in the RPS or not, has such a detailed, demanding, and decisive environmental review and approval process. That process speaks for itself and DOER should not create a duplicative and redundant process.

If the Department does determine that additional hydropower specific RPS standards are necessary, the concept that hydro facilities should comply with the Low Impact Hydropower Institute – a third-party, nongovernmental organization, based outside of Massachusetts – is not a positive approach and does not further the Department's goals of 15% renewable energy by 2020. Satisfying “healthy river flows, water quality standards, fish passage and protection measures and mitigation and enhancement opportunities” should not be the result of a certification by LIHI. The Department has the authority and the ability to make the final determination as to whether a hydro facility should qualify for the RPS without a non-governmental, non-accountable, out-of-state, third party review and decision.

As mentioned in previous testimony, the criteria for determining eligibility for site specific hydropower facilities is set forth in 401(a)(1) of the Clean Water Act administered by the Federal Energy Regulatory Commission (“FERC”), as well as in 314 CMR 4.00 (Surface Water Quality Standards). These standards are extremely detailed, stringent and “site specific” as required by Section 11F (c) of SECTION 32 of Chapter 169 of the Acts of 2008. If these

federal and state standards have been met, a hydropower facility should be allowed to participate in the RPS market without further scrutiny. Similar regulatory systems are in place in other states or under the auspices of EPA and FERC, and such programs exist in other countries sufficient to satisfy the statutory environmental obligations of the Act.

If the Department determines, however, that LIHI certification is necessary for certification, then there should not be an additional process after the LIHI certification. If a hydro facility is certified by LIHI, then the Department should also certify the Unit for the RPS. There is ample opportunity for the Department and state agencies (both here and in other states) to review both the application during the LIHI process and under the 401 review and FERC process. Specifically, 225 CMR 14.05(1)(a)6.d.i and 225 CMR 15.05(1)(a)6.d.i should be deleted from the regulations to reflect this. As mentioned previously, the FERC process combined with the 314 CMR 4.00 standards are extremely stringent, and with the addition of LIHI certification, hydro facilities have the strictest regulatory mechanism of all the renewables – even though it is non carbon-emitting, reliable, and environmentally sensitive.

The Association would also like the Department to clarify 225 CMR 14.05(1)(a)6.c and 225 CMR 15.05 (1)(a)6.c to reflect that both Marine and Hydrokinetic Energy facilities are separate renewables under the RPS, and thus can qualify for Renewable Energy Credits even though they may be located with a hydroelectric unit that may also qualify for the RPS. The Association believes that deletion of these sections will clarify the matter.

Additionally, 225 CMR 14.05(1)(a)6.e and 225 CMR 15.05(1)(a)6.e should be clarified to determine which agencies need to be notified about a LIHI application, as the term “Relevant Hydroelectric Agencies” is unclear and will be troublesome in practice. If there is no clear list of agencies or specific types of agencies to be notified, there is the potential that the Department could in practice believe that an agency be notified, where the Applicant does not, and vice versa. This causes confusion for the applicant and the Department alike, is detrimental to a clear regulatory process and undermines the renewable generation goals of the Green Communities Act.

Lastly, The Association would also like to reiterate its position regarding the determination of eligible incremental energy. Commenter's have stated that the average output of a facility should be determined by taking the average output over a certain number of years to account for fluctuations between flood and drought years. This method, unless it embraces a large span of years, on both the pre-improvement and post-improvement sides of the comparison, is inexact, at best. The Association recommends that either one of the following methods be allowed, at the applicant's discretion. Either: a) the FERC's "Renewable Energy Production Tax Credit: Instructions for Requesting Certification of Incremental Hydropower Production Pursuant to the Energy Policy Act of 2005" apply; or b) a "Water-to-Watts" method. Under a "Water-to-Watts" method, many applicants will have access to verifiable hourly hydrologic gage information, describing the quantity of river flow available to their facilities on an instantaneous basis. Almost all applicants have verifiable records indicating the rate of energy production at their facilities on an instantaneous basis. By correlating historic hydrologic and energy production records, applicants may develop a historic energy production rates for their facilities. These historic rates can easily be compared to the new energy production rates at their improved facilities, and an incremental energy production calculation can be made.

Thank you for the opportunity to submit comments. If you have any questions, please contact the undersigned.

Sincerely,

Thomas A. Tarpey  
President